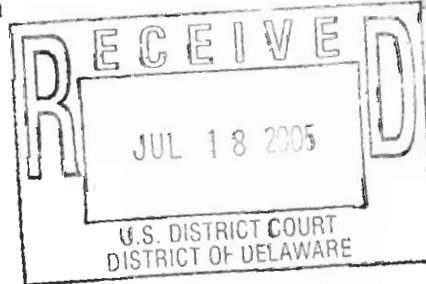


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Attorneys for Defendants.

FILED  
HELENA DIVISION

2005 MAY 19 PM 12 07



PATRICK E. DUFFY, CLE  
BY *Charles [signature]*  
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
BUTTE DIVISION

MAY 24 2005

05 - 499

U.S. DISTRICT COURT  
MAGTEN ASSET MANAGEMENT  
CORPORATION,

Plaintiff,

vs.

MIKE J. HANSON, and ERNIE J. KINDT,

Defendant

Case No.: CV-04-26-BU-RFC

**AFFIDAVIT OF KIMBERLY A. BEATTY  
IN SUPPORT OF MOTION TO  
TRANSFER VENUE OR IN THE  
ALTERNATIVE, STAY ACTION**

Kimberly A. Beatty, being duly deposed and sworn states:

1. I am one of the attorneys of record in Magten v. Hanson et al., No CV-04 26-BU-RFC, (United States District Court for the District of Montana), and am submitting this affidavit in connection with Defendants' Motion to Transfer Venue, or in the Alternative, Stay Action.

2. Although discovery has not yet commenced in this case, Defendants currently are identifying the location of potential witnesses, other persons with knowledge of the subject matter of this litigation, and documents which may be relevant to this matter. Both potential witnesses and documents may be found in various locations; however, a substantial number of



persons and documents are located in the Eastern United States. For example, representatives of Bank of New York and Law Debenture, the trustee and successor trustee of the Trust created by The Montana Power Company, and which trust indenture is relevant to these proceedings, are located in New York City. Documents in the possession of Bank of New York and Law Debenture also are located in New York. Without waiving any claim of privilege which Clark Fork and Blackfoot, LLC may have, a number of attorneys from the law firm of Paul Hastings Janofsky & Walker who were involved in the Transaction at issue here are located in New York, Washington, or Atlanta. In addition, in excess of 100,000 pages of documents which are related to the NorthWestern Bankruptcy, including documents relevant to this lawsuit, have been assembled for the bankruptcy proceedings and are located at the Paul Hastings offices in New York City. Finally, Magten maintains its corporate headquarters in New York, and its sole owner, Talton Embry, is a resident of the State of New York.

3. Michael J. Hanson, the President of NorthWestern Corporation and a Defendant here, was at all times material to this litigation a citizen of South Dakota and has his principal office in Sioux Falls, S.D. Mr. Hanson also is involved as a potential witness or person with knowledge about the Transaction at issue here, which is the same Transaction at issue in numerous other actions initiated by Magten and now pending in various courts, all in the state of Delaware.

4. Mr. Ernie Kindt, a citizen and resident of Montana, also is a potential witness or person with knowledge about matters which are raised in the Magten litigation which is all pending in the state of Delaware. Mr. Kindt consents to making himself personally subject to the jurisdiction of the Delaware courts where the remaining Magten litigation is pending.



5. In view of the multiple lawsuits pending in Delaware, it is no less convenient for Mr. Kindt or for Mr. Hanson to be available to the Delaware courts if this litigation is also transferred to Delaware where the other actions are all pending.

6. Documents related to this case and the cases pending in Delaware are also located in South Dakota, California, and Montana. Therefore, changing venue to Delaware will not make production of these documents less convenient for the Defendants.

7. Attached hereto as Exhibit A is a true and correct copy of Proof of Claim No. 842 of Magten Asset Management Corporation, dated January 13, 2004.

8. Attached hereto as Exhibit B is a true and correct copy of Complaint to Avoid the Transfer of Assets of Clark Fork and Blackfoot LLC to NorthWestern Corporation dated April 2004.

9. Attached hereto as Exhibit C is a true and correct copy of Decision Re: Motion to Dismiss, dated August 20, 2004.

10. Attached hereto as Exhibit D is a true and correct copy of the adversary proceeding Complaint filed by NorthWestern against Magten, dated August 20, 2004.

11. Attached hereto as Exhibit E is a true and correct copy of the Order Allowing the Debtor to Dismiss its Complaint Against Magten and Embry, dated March 9, 2005.

12. Attached hereto as Exhibit F is a true and correct copy of Magten's Notice of Appeal Order Confirming Debtor's Second Amended and Restated Plan of Reorganization, dated October 25, 2004.

13. Attached hereto as Exhibit G is a true and correct copy of Magten's Amended



Designation of Items to be Included in the Record on Appeal and Statement of the Issue to Be Presented On Appeal from the Order Confirming Debtor's Second Amended and Restated Plan of Reorganization, dated November 8, 2004.

14. Attached hereto as Exhibit H is a true and correct copy of the Notice of Docketing RE: Notice of Appeal Order Confirming Debtor's Second Amended and Restated Plan of Reorganization, dated December 10, 2004.

15. Attached hereto as Exhibit I is a true and correct copy of Notice of Motion and Debtor's Motion for Order Pursuant to Bankruptcy Rule 9019 Approving Memorandum of Understanding, dated April 28, 2004.

16. Attached hereto as Exhibit J is a true and correct copy of Objection of Magten Asset Management Corporation to the Debtor's Motion For an Order Pursuant to Bankruptcy Rule 9019 Approving Memorandum of Understanding, dated May 5, 2004.

17. Attached hereto as Exhibit K is a true and correct copy of the Memorandum Decision and Order Approving Memorandum of Understanding, dated October 7, 2004.

18. Attached hereto as Exhibit L is a true and correct copy of the Notice of Appeal Order Approving the Memorandum of Understanding, dated October 26, 2004.

19. Attached hereto as Exhibit M is a true and correct copy of Notice of Docketing RE: Appeal of Order Approving Memorandum of Understanding, dated December 9, 2004.

20. Attached hereto as Exhibit N is a true and correct copy of the Order Granting Motion of NorthWestern Corporation and Magten Asset Management Corporation to Consolidate Appeals of the Memorandum of Understanding and the Second Amended and Restated Plan of Reorganization, dated December 30, 2004.

21. Attached hereto as Exhibit O is a true and correct copy of the Order Denying Joint



Motion of Magten Asset Management Corporation and Law Debenture Trust Company of New York seeking to enforce the Magten Settlement, and Memorandum Opinion Denying Joint Motion, each dated March 10, 2005.

22. Attached hereto as Exhibit P is a true and correct copy of the Notice of Appeal Order Denying Joint Motion seeking to enforce the Magten Settlement, dated March 17, 2005.

23. Attached hereto as Exhibit Q is a true and correct copy of the Complaint to Revoke Order of Confirmation Pursuant to Section 1144 of the Bankruptcy Code and Rule 7001(5) of the Federal Rules of Bankruptcy Procedure and for Breach of Fiduciary Duty.

24. Attached hereto as Exhibit R is a true and correct copy of the Complaint and Demand for Jury Trial in Magten, et al v. Paul Hastings Janofsky & Walker LLP, Montana Second Judicial District Court, Silver Bow County, Cause No. DV-04-131, filed May 20, 2004.

25. Attached hereto as Exhibit S is a true and correct copy of the Memorandum and Order in Magten, et al v. Paul Hastings Janofsky & Walker LLP, transferring action to the District of Delaware, dated September 8, 2004.

26. Attached hereto as Exhibit T is a true and correct copy of the Motion of Magten Asset Management Corporation and Law Debenture Trust Company of New York to Withdraw the Reference to Bankruptcy Court and for Consolidation with Civil Action Number 04-1256 Pending in this District and Memorandum in Support, each dated November 17, 2004.

27. Attached hereto as Exhibit U Order regarding "Motion and Memorandum of Law in Support of Motion for Stay of Adversary Proceedings Pending Resolution of Motion to Withdraw the References to Bankruptcy Court, dated December 7, 2004.



28. Attached hereto as Exhibit V is a true and correct copy of Complaint in Magten, et al. v. Bank of New York, et al., in the Court of Chancery of the State of Delaware In and for New Castle County, filed March 31, 2005.

29. Attached hereto as Exhibit W is a true and correct copy of Complaint and Demand for Jury Trial in Magten, et. al. v. Mike J. Hanson, et al., in the United States Court for the District of Montana, Butte Division, filed April 19, 2004.

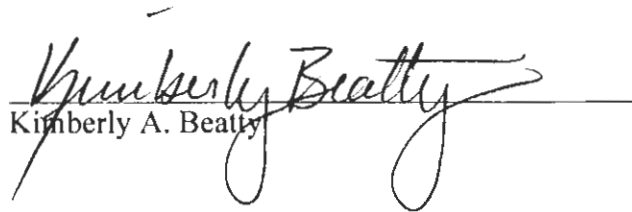
30. Attached hereto as Exhibit X is a true and correct copy of selected pages 26-42 of Transcript of Proceedings Before the Honorable Charles G. Case, II, held October 8, 2004.

31. Attached hereto as Exhibit Y is a true and correct copy of the Answer in Magten, et. al. v. Mike J. Hanson, et. al.

32. Attached hereto as Exhibit Z is a true and correct copy of Memorandum in Support of Summary Judgment.

33. Attached hereto as Exhibit AA is a true and correct copy of NorthWestern Corporation's Reply Memorandum in Further Support of its Motion to Dismiss Complaint to Avoid Transfer of Assets, dated June 28, 2004.

Further affiant sayeth not.

  
Kimberly A. Beatty



STATE OF MONTANA       )  
                                      : ss.  
County of Lewis and Clark    )

On this 19<sup>th</sup> day of May, 2005, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Kimberly A. Beatty, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.

(Notarial Seal)

Kristi K Meier  
NOTARY PUBLIC FOR THE STATE OF MONTANA  
Printed Name: Kristi K Meier  
Residing at:       Helena, Montana  
My commission expires: 2/12/2007



## CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of May, 2004, a true and correct copy of the foregoing was mailed by first-class mail, postage prepaid, addressed to:

James H. Goetz  
J. Devlan Geddes  
Goetz, Gallik & Baldwin, P.C.  
35 North Grand  
P.O. Box 6580  
Bozeman, MT 59771-6580

Bonnie Steingart  
John W. Brewer  
Fried, Frank, Harris, Shriver & Jacobsen, LLP  
One New York Plaza  
New York, NY 10004



BROWNING, KALECZYC, BERRY & HOVEN, P.C.